



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2004

Mr. Ignacio Perez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2004-8000

Dear Mr. Perez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209909.

The City of McAllen (the "city") received a request for Public Utility Board ("PUB") payment and credit history for certain identified individuals. You indicate that you have released some of the requested information, but claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code, which excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information another statute makes confidential. You assert that some of the requested information is confidential under section 182.052 of the Utility Code, which provides, in relevant part:

- (a) Except as provided by Section 182.054, a government-operated utility may not disclose personal information in a customer's account record, or any information relating to the volume or units of utility usage or the amounts

billed to or collected from the individual for utility usage, if the customer requests that the government-operated utility keep the information confidential. However, a government-operated utility may disclose information related to the customer's volume or units of utility usage or amounts billed to or collected from the individual for utility usage if the primary source of water for such utility was a sole-source designated aquifer.

Util. Code § 182.052(a). "Personal information" under section 182.052(a) means an individual's address, telephone number, or social security number. *See id.* § 182.051(4); *see also* Open Records Decision No. 625 (1994) (construing statutory predecessor). We note that the names of customers are not included in the definition of personal information, and therefore are not confidential under section 182.052 of the Utilities Code. Water service is included in the scope of utility services covered by section 182.052. Util. Code § 182.051(3). Section 182.054 of the Utilities Code provides six exceptions to the disclosure prohibition found in section 182.052. *See id.* § 182.054. You have provided no information to allow us to conclude that these exceptions apply in this instance.

The submitted information contains billing information pertaining to individual customers' volume or units of utility consumption and amounts billed to or collected for usage. You state, and provide documentation showing, that the two individuals to whom the submitted billing information pertains have timely elected to keep their public utility information confidential under section 182.052(a) of the Utilities Code. However, section 182.052(a) provides that the utility may disclose a customer's billing information, notwithstanding the customer's request for confidentiality, if the primary source of water for such utility is a sole-source designated aquifer. We are unable to determine from the information provided whether the primary source of water for the city's utility is a sole-source designated aquifer. Therefore, we make the following determination: because the customers at issue requested that billing information be kept confidential prior to the date the city received the present request, if the primary source of water for the city utility is not a sole-source designated aquifer, we determine that the named customers' addresses and corresponding billing information are confidential under section 182.052 of the Utilities Code and must be withheld. *See* Open Records Decision No. 625 (1994) (construing statutory predecessor). If, however, the primary source of water is a sole-source aquifer, the city has the discretion to release the billing information, notwithstanding the customers' timely requests for confidentiality.¹ The city must release all remaining information.

¹ Because our conclusion under section 552.101 is dispositive as it pertains to customers' "personal information" as defined under section 182.052(a) of the Utilities Code, we need not address your remaining argument against the disclosure of this information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

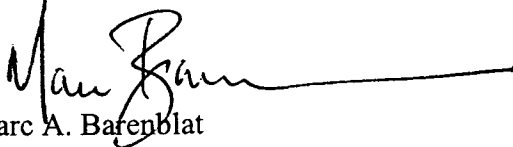
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc A. Barenblat", with a long horizontal line extending to the right.

Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 209909

Enc. Submitted documents

c: Ms. Patsy Rogers
Citizens for a Better and Safer McAllen
8506 Chivalry
San Antonio, Texas 78254
(w/o enclosures)